No. 92-1123

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

IZUMI SEIMITSU KOGYO KABUSHIKI KAISHA,

Petitioner,

v.

U.S. PHILIPS CORP., NORTH AMERICAN PHILIPS CORP., N.V., PHILIPS GLOEILAMPENFABRIEKEN and WINDMERE CORPORATION

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF OF AMICUS CURIAE TRIAL LAWYERS FOR PUBLIC JUSTICE IN SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

Trial Lawyers for Public Justice, P.C. (TLPJ), is a national public interest law firm that represents victims of the abuse of power in our society. TLPJ selects its cases from among those that will advance the cause of justice, educate the public, modify corporate or government behavior, or improve the access of victims to the courts to remedy injustice. Supported by over 1300 lawyers in the United States and around the world, TLPJ is dedicated to using civil remedies to advance the public good.

We believe that the practice of routinely vacating decisions at the parties' request, if approved by this Court, would pose a grave threat to our civil justice system. Routine vacatur is both inefficient, in that it encourages litigants to delay settlement until after trial and judgment, and destructive of the public values inherent in a final judgment. In this brief, we advocate the rejection of a rule requiring courts to defer to the request of the parties for vacatur and the adoption of a rule requiring courts to deny post-settlement motions for vacatur unless the parties demonstrate that the judgment is infirm or that retention of the judgment is otherwise unfair for reasons not of the parties' making.

SUMMARY OF ARGUMENT

The practice of routinely granting motions to vacate when a case is settled pending appeal is destructive to the judicial process and should be rejected by this Court. By enabling a judicial decision to be erased, vacatur imposes substantial costs on the public. A judgment's value extends beyond the fact that it resolves a particular dispute: it may have preclusive effect in subsequent litigation; it serves as a precedent, developing the law; and it imposes public accountability on litigants whose actions result in a finding of liability. Courts that have allowed vacatur on the theory that it promotes settlement have been misled by a false economy; by allowing the litigants to escape the consequences of an adverse decision, vacatur reduces the risk to the litigants of going to trial, thereby causing them to delay settlement.

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[1] Counsel for all parties have consented to the filing of this brief. Letters of consent have been filed with the Clerk.

Routine vacatur works a harmful distortion on the litigation process. It reduces respect for the judiciary by permitting a judicial decision, the public act of public official, to be bought and sold. It also encourages the parties to use the decision for their private benefit, as a bargaining chip in the post-trial settlement process. This allows the litigants to appropriate the public value of a judgment for themselves. Finally, vacatur does not operate evenhandedly, but allows rich repeat litigants to manipulate the development of the law to their benefit, by buying their way out of unfavorable precedents.

ARGUMENT

I. ROUTINE VACATUR IMPOSES SUBSTANTIAL COSTS ON THE PUBLIC.

The primary argument advanced by advocates of routine vacatur is that civil litigation involves disputes among private litigants, and that the courts should do all they can to facilitate the settlement of these disputes. In fact, however, routine vacatur involves significant public costs. Moreover, the availability of routine vacatur discourages rather than encourages settlements by the litigants.

A. The Finality of Judgments Conserves Judicial Resources in Other Litigation.

One significant public cost associated with vacatur is the destruction of a judgment's preclusive effect. A final judgment can be used to bar future litigation under the doctrines of res judicata and collateral estoppel. The Court has explained the value of these doctrines in conserving judicial resources, preventing multiplicitous litigation and minimizing the possibility of inconsistent decisions. *Montana v. United States*, 440 U.S. 147, 153-4 (1979). Preclusion thus serves to conserve the resources consumed by litigation and to preserve the public interest in the final resolution of issues, as well as disputes.

Because a vacated decision has no legal effect, vacatur destroys the preclusive value of a judgment. *See* Jill E. Fisch,

Rewriting History: The Propriety of Eradicating Prior Decisional Law through Settlement and Vacatur, 76 Cornell L. Rev. 589, 615-24 (1991) (analyzing effect of vacatur on preclusion). As the facts of this case demonstrate, vacatur may then impose relitigation costs upon future litigants, the courts and the public. The Court of Appeals below vacated a Florida judgment even though it knew that, by doing so, it would force issues decided by that judgment to be relitigated; a district court in Illinois had already granted summary judgment based on the preclusive effect of the Florida judgment. *U.S. Philips Corp. v. Windmere Corp.*, 971 F.2d 728, 730-31 (Fed. Cir. 1992). The public interest in preventing respondent Philips from having a second chance to consume judicial resources should have been a sufficient basis for denying vacatur.

Litigants seek vacatur precisely for the purpose of destroying the preclusive effects of a judgment and gaining a second bite at the apple. Denial of such motions is appropriate because it allows subsequent litigants to resolve previously litigated issues expeditiously without the substantial consumption of resources involved in a second trial. Thus, after National Union was unsuccessful in persuading the court in *National Union Fire Insurance Co. v. Seafirst Corp.*, 891 F.2d 762, 769 (9th Cir. 1989), to vacate the trial court's judgment, subsequent defendants were able to use that judgment to prevent National Union from relitigating its claims against them.[2] By contrast, with the increasingly multi-party nature of litigation, routine vacatur would allow a losing plaintiff, after settlement and vacatur, to seek other targets against whom to reassert identical claims.

It is difficult to determine how often a vacated judgment will have preclusive effect in another case because future litigants who might benefit from preclusion may not be present when the

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[2] After concluding its litigation against Seafirst, National Union attempted to bring similar claims, arising out of the same transaction, against Seafirst's attorneys and accountants. *See* Fisch, *Rewriting History*, *supra* at 621, notes 165-67 (describing preclusive effect of original judgment).

court rules on a motion to vacate. The court is then reduced to speculation as to the likelihood of preclusion and, lacking clear evidence of future lawsuits, may be inclined to view preclusion as purely hypothetical. *See Nestle Co. v. Chester's Mkt., Inc.*, 756 F.2d 280, 284 (2d Cir. 1985) (describing "plight of hypothetical future defendants facing hypothetical future lawsuits"). The fact that these litigants are not before the court does not render their interest fictitious.[3] It was foreseeable, for example, that vacating the decision in *Nestle Co. v. Chester's Mkt., Inc.*, 596 F. Supp. 1445, 1455 (D. Conn. 1984), would force future competitors to relitigate the rights to use the "toll house" term.

Because the utility of a judgment in subsequent litigation will often extend to situations in which, unlike the present case, the potential beneficiaries of the judgment are not present before the court to defend it, courts should not routinely grant motions to vacate. The very fact that a litigant seeks vacatur of a decision suggests the possibility that the decision may be used against that litigant in subsequent litigation.

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[3] It is not possible to conduct after-the-fact research to ascertain whether courts have vacated valuable decisions; when a decision is vacated prior to the publication of a written opinion, there is often nothing left to inform the public what was decided. The West Reporting system and the on-line Reporting Services (LEXIS and WESTLAW) also allow courts to withdraw vacated opinions from publication. The only traces of such a decision may be a cryptic statement like the following:

> EDITOR'S NOTE: The opinion of the United States District Court, S.D.N.Y., *Mason Tenders Council Welfare Fund v. Akaty Construction Corp.*, published in the advance sheet at this citation, 724 F. Supp. 209-224, was withdrawn from the bound volume because the opinion was vacated and withdrawn by order of the Court.

As this example illustrates, unless a researcher had examined the West advance sheets, she would be unlikely to discover that this case involved the relitigation of an issue which had been decided in an earlier lawsuit involving the same plaintiff. Incidentally, the prior lawsuit had also been vacated. *Mason Tenders District Council Welfare Fund v. Dalton*, 648 F. Supp. 1309, *vacated upon request of the parties*, 648 F. Supp. 1318 (S.D.N.Y. 1986).

B. The Public Has An Interest in the Finality of Judicial Decisions and in the Development of the Law.

The public benefits from judicial decisions extend beyond the preclusive effect of the judgment. As the Seventh Circuit has observed, a judgment is a precedent, produced with public resources and with a value that extends beyond the litigants involved in that case. *Memorial Hospital v. United States Department of Health & Human Services*, 862 F.2d 1299, 1302 (7th Cir. 1988). Although it is sometimes argued that vacatur most frequently involves district court decisions that have little or no precedential value in any event, the volumes of the Federal Supplement in law libraries bear silent testimony to the public value of reported decisions, even at the district court level.[4]

The value of these decisions extends beyond their strict use as precedent. Many judicial decisions require the resolution of complex issues of law and fact. Litigation has become increasing complicated; many cases involve issues of first impression requiring the interpretation of complex statutes, or the resolution of difficult technical or scientific questions through the assistance of expert testimony.

In addition to clarifying the rights and responsibilities of future litigants, these cases clarify the law for future actors. A detailed district court decision analyzing the clean-up requirements under an environmental statute provides guidance for companies involved in future pollution clean-up outside of the litigation context. A trial which addresses scientific issues such as the toxic effect of hazardous substances may affect the development of administrative safety standards as well as industrial practices for the handling of these substances. A decision resolving issues of intellectual property protection guides inventors' decisions about investing in and protecting future research efforts.

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[4] Moreover, by demonstrating a market for unreported decisions and slip opinions, the on-line reporting services indicate that there is a public value even in decisions that are considered by some too unimportant to publish.

When these decisions are vacated, the resources committed to developing the law have been lost. *See, e.g., Long Island Lighting Co. v. Cuomo,* 888 F.2d 230 (2d Cir. 1989) (vacating 56-page district court opinion interpreting and evaluating the validity of two complex environmental statutes); *Marathon Oil Co. v. Lujan*, 751 F. Supp. 1454 (D. Colo. 1990), *aff'd in part and rev'd in part*, 937 F.2d 498 (10th Cir. 1991) (relitigation of complex issues involving rights to oil shale mining patents under federal mining law after prior district court opinion addressing many of these issues was vacated when the case was settled on appeal.)[5]

Judgments also impose public accountability. A judicial finding of wrongdoing or illegality has public significance that extends beyond the parameters of the litigation itself. A well-known illustration is provided by two circuit court decisions involving Glenn W. Turner Enterprises. In the first, *SEC v. Glenn W. Turner Enterprises, Inc.*, 474 F.2d 476 (9th Cir.), *cert. denied*, 414 U.S. 821 (1973), Glenn Turner was found guilty of securities fraud in connection with the sale of self-improvement courses. The enterprise amounted to a ponzi scheme which the court described as a "gigantic and successful fraud." *Id.* at 478. The second case involved a different method of operation, a cosmetics enterprise, conducted by a Glenn Turner subsidiary. *SEC v. Koscot Interplanetary, Inc.*, 497 F.2d 473 (5th Cir. 1974). Because the two enterprises differed, collateral estoppel did not apply. The Fifth Circuit explained, however, that its task was "greatly simplified by the Ninth Circuit's decision in *SEC v. Glenn W. Turner Enterprises, Inc.*" because the promotional schemes, although technically different, involved parallel fraudulent practices. *Id.* at 484.

When a decision is vacated, both public and private accountability are lost. Thus vacatur of the district court opinion in *Kitlutsisti v. ARCO Alaska, Inc.*, 592 F. Supp. 832, 835-37 (D. Alaska 1984), *vacated*, 782 F.2d 800 (9th Cir. 1986), erased

[5] The prior opinion was *Tosco Corp. v. Hodel*, 611 F. Supp. 1130 (D. Colo. 1985), *vacated*, 826 F.2d 948 (10th Cir. 1987).

a district court finding that the Environmental Protection Agency had failed to perform its statutory duty to process applications for drilling permits under the Federal Water Pollution Control Act of 1972. The court found that the EPA had repeatedly "been using 'creative' administrative techniques of dubious legality to avoid [its] clear statutory mandate . . . of issuing NPDES permits." 592 F. Supp. at 838-44. Similarly, the post-settlement vacatur in *Policeman and Firemen Retirement System v. Income Opportunity Realty Trust,* No. C-89-1152 (AJZ) (N.D. Cal. May 16, 1989), erased the court's holding that the defendant's poison pill/purchase rights plan was illegal.[6]

C. Routine Vacatur Discourages Rather Than Promotes Early Settlement.

Respondents in this case argue that the judicial practice of routinely vacating a judgment or jury verdict when the case is settled on appeal encourages parties to settle their dispute rather than continuing the appellate process. *See* Respondents' Brief in Opposition to Petition for Certiorari (hereafter "Opp.") at 10. This argument has been accepted by the circuits that follow the practice of routine vacatur; these courts have concluded that submitting to the parties' request for vacatur is necessary to promote settlement. *See, e.g., Nestle Co. v. Chester's Mkt.*, 756 F.2d at 284 (vacatur justified by importance of promoting settlement).[7]

[6] A similar state court practice in *Neary v. The Regents of the University of California,* 7 Cal. App. 4th 73, 278 Cal. Rptr. 773 (1991), *rev'd*, 3 Cal. 4th 273, 10 Cal. Rptr. 2d 859, 834 P.2d 119 (1992), allowed three veterinarians employed by the University of California to reverse, by stipulation, a jury finding that they had libeled a cattle farmer by falsely accusing him of mismanagement in connection with an investigation by state agricultural officials into the death of his cattle. As in *Kitlutsisti,* vacatur erased the finding that officials acting in a public capacity had acted wrongfully.

[7] Absent the proffered interest in promoting settlement, there seems to be little basis for distinguishing a request for vacatur when a case is settled on appeal from any other request to the court under Fed. R. Civ. P. 60(b) for relief from a judgment. The Court has explained that

The argument that vacatur encourages settlement is faulty, however. Although settlement and vacatur put an end to the particular dispute before the court, the systematic practice of granting motions to vacate when a case is settled on appeal encourages parties to delay settlement until after trial. Accordingly, the availability of vacatur actually discourages early settlement and wastes judicial resources in the process.

Vacatur encourages litigants to delay settlement because it removes one of the incentives to settle a case early, the possible consequences of an adverse judgment. In considering whether to settle or go to trial, a litigant must weigh the possibility of losing at trial, and the consequences of that loss, against the possibility of vindication.[8] In many cases, however, the consequences of losing extend beyond the monetary value of the judgment. The collateral consequences of a judgment, as described above, may be even more costly to an unsuccessful litigant than the judgment itself. The litigant's desire to avoid these effects provides an incentive to settle a case early, before a court renders a final judgment. This incentive should be preserved, because early settlement reduces both the public and private costs of litigation.

If a losing party can erase an adverse judgment and its consequences through settlement on appeal and vacatur, the litigant will have less incentive to settle early. A litigant who fears the precedential or preclusive effect of a finding of liability can roll the dice by going to trial, secure in the knowledge that an adverse decision can later be removed. The availability of

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"extraordinary" circumstances are required to justify such relief. *Ackermann v. United States*, 340 U.S. 193, 202 (1950).

[8] This decision has been described in economic terms as an investment decision, in which the litigant continually weighs the expected costs of continued participation in the lawsuit against the expected value of proceeding to final judgment. *See* Fisch, *Rewriting History, supra* at 594 n.21 (citing leading economic models of litigation decisions). Economic models of settlement indicate that, at any point in the litigation process, the litigant will be willing to settle for an amount equal to the expected value of the final judgment minus the costs of achieving that judgment. *See id.* at 632-35 (describing economic model of settlement process).

vacatur thus reduces the risk of going to trial and encourages the litigants to squander the substantial public resources consumed by a trial.[9]

The case at bar illustrates that, by allowing litigants to escape the consequences of an adverse decision, vacatur discourages early settlement. The risk of incurring an adverse ruling which might have preclusive effect in other similar cases might have caused Philips to settle prior to final judgment.[10] Instead, Philips was able to rely on the precedent in the Federal Circuit of routinely granting motions to vacate in cases on appeal (Opp. at 10) and conclude that there would be little cost to litigating the issue to final judgment in Florida. Any deficiencies in the resulting verdict could be remedied through vacatur, and Philips might perhaps benefit from the experience of the Florida litigation when it relitigated the issue in Illinois.

II. ROUTINE VACATUR DISTORTS THE JUDICIAL PROCESS.

A. Routine Vacatur Permits Judicial Decisions to Become Commodities That Litigants Can Buy and Sell.

By allowing the parties to erase a judgment upon request, the courts do more than simply squander public resources. They create a process in which judicial decisions, and ultimately the development of the law, become commodities that can be bought and sold. Post-trial settlement negotiations no longer determine monetary payments and the future conduct of the litigants, but whether the judgment will endure. This presents a problem

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[9] Encouraging litigants to delay settlement until after trial is particularly costly because, in terms of the consumption of public resources, trial is generally the most expensive part of the litigation.

[10] Indeed, this risk was not a speculative one; Philips was asserting similar claims in the Northern District of Illinois and could reasonably expect a judgment in the instant case to have preclusive effect in that litigation, absent vacatur. *See U.S. Philips Corp. v. Sears Roebuck & Co.*, No. 85-C-5366 (N.D. Ill. Oct. 5, 1990), *recons. denied*, 1991 U.S. Dist LEXIS 506 (N.D. Ill. Jan. 16, 1991).

because the judgment is not the private property of the winning litigant, who should not be deciding it should be retained or sold. *See Memorial Hospital*, 862 F.2d at 1302 ("The precedent, a public act of a public official, is not the parties' property."). By converting the judgment into a "bargaining chip," vacatur also diminishes respect for the judiciary. *See id.*

This distorts the legal process in two ways. First, as discussed above, the losing litigant is able to escape the adverse consequences of the judgment. Second, the bartering process results in a windfall to the winning litigant. By selling the judgment, the winner is paid for something that does not belong to it. The winner generally sacrifices nothing in agreeing to free its adversary from the consequences of the adverse decision, which the loser is willing to pay handsomely to eliminate, because the costs imposed on the loser result from the value of the judgment to the public, not the winning litigant.

For example, a successful private litigant in a case like *Nestle* or the case at bar has no reason to defend a judgment if the settlement provides equivalent monetary or other relief. Indeed, a rational litigant will recognize that its bargaining position has been enhanced by its adversary's need to erase the judgment, and may extract additional consideration in exchange for supporting vacatur. The judgment becomes a mere tool for the litigant to exploit.

The settlement in *Bankers Trust Co. v. Hartford Accident and Indemnity Co.*, 518 F. Supp. 371, *vacated*, 621 F. Supp. 685 (S.D.N.Y. 1981), is illustrative. After the district court found Hartford liable for the cleanup costs of a polluting oil leak, the case was settled and the district court opinion was vacated. The fortuitous disclosure of the settlement terms seven years later in another case revealed that the settlement agreement provided for Hartford to pay Bankers Trust approximately $200,000 *more* than the value of Bankers Trust's claim in exchange for the destruction of the district court opinion. *See Intel Corp. v. Hartford Accident and Indemnity Co.*, 692 F. Supp. 1171, 1192 n.32 (N.D. Cal. 1988) (describing contents of affidavit by counsel for Bankers Trust and terms of settlement agreement in

Bankers Trust case). Under these circumstances, the litigant has appropriated a portion of the societal value of the judgment for its private gain.

Thus, both litigants may gain from vacatur; the losing party by achieving control over the litigation process, and the winning party by enhancing its settlement position through use of the public values in the judgment. The public and our system of justice lose, and their only guardians are the members of the judiciary. Because both parties benefit from vacatur, the public's interest and the integrity of the judicial process cannot be defended in an uncontested motion to vacate. The settlement transforms the litigation from an adversarial process to a collusive one in which neither party has an incentive to defend the judgment, and the court is forced to act without full knowledge of the potential consequences of a decision to vacate.

B. Routine Vacatur Slants the Law in Favor of Particular Litigants.

The effect of erasing judicial decisions through routine vacatur extends beyond distorting the development of the law; it inevitably distorts in a particular direction. The reason for this is that certain groups of litigants have both greater ability to affect the legal process through vacatur and greater incentive to do so. Routine vacatur allows repeat players in the litigation process, particularly rich, institutional litigants, to have a disproportionate influence on the development of the law.[11] Several Circuit courts have expressed concern that a litigant with deep pockets can use vacatur to have an adverse decision "wiped from the books." *See, e.g., Clarendon Ltd. v. Nu-West Industries, Inc.*, 936 F.2d 127, 129 (3d Cir. 1991) ("a losing

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[11] *See Village Escrow Co. v. National Union Fire Ins. Co.*, 202 Cal. App. 3d 1309, 248 Cal. Rptr. 687, 696 (1988) (observing that social cost of letting litigants buy their way out of unfavorable decisions "could even distort the law by allowing parties who possess ample means to prevent the filing of adverse precedents while those without means are unable to do so."). The California Supreme Court denied review and ordered depublication of the *Village Escrow* decision. 248 Cal. Rptr at 687 n.*.

party with a deep pocket should not be permitted to use a settlement to have an adverse precedent vacated"); *United States v. Garde*, 848 F.2d 1307, 1311 (D.C. Cir. 1988) (declining to "encourage litigants who are dissatisfied with the decision of the trial court 'to have them wiped from the books'").

Insurance companies are one example of the kind of litigants who benefit disproportionately from vacatur and who can use vacatur to distort the development of the law. An insurance company is likely, because of the nature of its business, to face some issues repeatedly, such as the interpretation of standard policy clauses, coverage issues, etc. It therefore has a considerable stake in having the law develop favorably with respect to those issues and an incentive that extends beyond any single case in destroying unfavorable interpretations of the law. Although the absence of a smoking gun when a judgment is vacated makes it difficult to determine the frequency with which this occurs, one prominent insurance company lawyer has been quoted as claiming close to a 50% success rate in getting adverse appellate court decisions wiped out. *See* Philip Carrizosa, *Making the Law Disappear*, California Lawyer, Sept. 1989, at 65-66 (quoting Ellis J. Horvitz of Horvitz & Levy).

The *Reliance Insurance* litigation is illustrative of this practice. A decision by the Eleventh Circuit in *Reliance Insurance Co. v. Kent Corp.*, 896 F.2d 501, *vacated*, 909 F.2d 424 (11th Cir. 1990), reversing a district court's grant of summary judgment in favor of Reliance, had the potential to broaden an insurance company's obligation to defend significantly. Shortly after the circuit opinion was issued, the parties settled and the opinion was vacated. *See Reliance Ins. Co. v. Kent Corp.*, 909 F.2d 424 (11th Cir. 1990) (vacating panel opinion in light of settlement). Thus the insurance industry removed a dangerous precedent from the books. Similarly, the decision in *Bankers Trust Co. v. Hartford Accident and Indemnity Co.*, 518 F. Supp. 371, *vacated*, 621 F. Supp. 685 (S.D.N.Y. 1981), if not vacated, would have established a valuable precedent for insurance policyholders seeking coverage

for environmental cleanup costs.[12] The insurance industry had both the incentive and the funds to destroy this pro-policyholder decision. By destroying adverse decisions, the industry can continue to argue in future cases that the weight of authority is on its side, regardless of how many interim losses it sustains.[13]

The insurance industry is only one example. Certain types of litigation, including products liability, toxic tort cases, and employment discrimination claims, frequently pit an individual plaintiff with limited litigation experience and interest against an institutional defendant with repeated exposure to the litigation process. The defendants in these cases have both the reason and the resources to "roll the dice" and then, if the gamble fails to pay off, to buy out unfavorable decisions. The plaintiffs do not.

The availability of routine vacatur only increases the ability of these defendants to "play hardball" by forcing adversaries with limited resources to choose between settling cheaply or bearing the expense and risks of trial. Through their ability to purchase and destroy adverse verdicts, these defendants may also delay and conceal public awareness of their wrongdoing. A potential plaintiff who has been injured by a defendant's toxic waste or dangerous product, for example, may search in vain for precedents establishing causation and liability, unaware that the defendant has caused any unfavorable judgments to be erased.

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[12] Stacy Gordon, *Vanishing Precedents*, Business Insurance, June 15, 1992, at 1.

[13] *See Slater v. Lawyers' Mutual Insurance Co.*, 227 Cal. App. 3d 1415, 278 Cal. Rptr. 479 (1991) (Johnson, J., dissenting) (criticizing this practice). Judge Johnson observed:

> [T]he "weight of authority" . . . is inconclusive on this issue. It is also deceiving, because it has been shaped in part by the well conceived litigation strategy of at least one of the insurance companies involved in these appeals. One important appellate decision . . . has been purged from the law books as a result of a settlement agreement between that insurance company and the successful appellant. A determined attempt was made to do the same in another case.

Id. at 1427.

In the end, the process subverts both the public interest and our system of justice.

CONCLUSION

For these reasons, we urge this Court to reject the rule that parties who settle a case pending appeal are entitled to vacatur as a matter of right. Instead, the courts should review motions to vacate with the presumption that vacatur will not be granted at the request of the parties. Absent a showing that the underlying judgment is infirm, courts should be directed to deny motions to vacate a case that has been settled pending appeal. Accordingly, the judgment of the Federal Circuit should be reversed.

Respectfully submitted,

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